

**Central Administrative Tribunal
Principal Bench**

OA No. 3083/2014

New Delhi this the 16th day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

1. Krishan Kanhiaya,
S/o Sh. Manohar Lal Khurana,
Aged about 45 years,
Address: House No. 1006/18, Ghani Pura,
Rohtak-124001, Haryana

At present posted as ITO (OSD)
O/o CIT-V, New Delhi

2. Baljeet Singh,
S/o Late Sh. Prehlad Singh,
Aged about 44 years,
Address: C-237, Delta-I, Greater Noida,
Gautam Budh Nagar, UP

At present posted as Inspector,
O/c CIT central-3, New Delhi

3. Diwakar Joshi,
S/o Sh. CD Joshi,
Aged about 44 years,
Address: B-106, Sector-36,
NOIDA, UP

At present Posted Inspector,
O/o CIT-XII, New Delhi

4. Anupam Kumar,
S/o Sh. Shriram Singh,
Aged about 44 years,
Address: 12-D, Green View Apartments,
MIG, Pocket-6, Sector-82, NOIDA, UP

At present Posted as Inspector,
O/o CIT, Central-2, New Delhi

5. Ramesh Tanwar,
S/o Tara Chand,

Aged about 45 years,
Address: WZ-489, Basai Darapur,
New Delhi-110015,

At present posted as ITO (OSD)
O/o CIT-VI, New Delhi

6. Shiv Kumar,
S/o Sh. Bhagwan Dass,
Aged about 47 years,
Address: WZ-326, Near Old Syndicate Bank,
Palam Village, New Delhi-110045

At present posted as ITO (OSD),
O/o DIT, (International Taxation)-II,
New Delhi

7. Rajdeo Prasad Verma,
S/o Late Naresh Prasad Verma,
Aged about 48 years,
Address: B-406, Vasundhara Valley Apartments,
Sector-6, Vasundhara, Ghaziabad,

At present posted as ITO (OSD)
O/c CIT-II, New Delhi

.Applicants

(By Advocate: Shri A.K. Behera)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India, New Delhi-110001
2. Central Board of Direct Taxes (CBDT),
North Block, New Delhi-110001
Through the Chairperson, CBDT
3. The Principal Chief Commissioner of Income Tax,
(CCA),
CR Building, IP Estate,
New Delhi-110002

...Respondents

(By Advocate: Shri Piyush Gaur)

ORDER (Oral)

By Mr. A.K. Bhardwaj, Member (J):

The prayer made in the present OA filed under Section 19 of the Administrative Tribunals Act, 1985 read thus:-

- “A. By an appropriate Order or Direction the respondents be directed to prepare/recast the seniority list dated 24/26.04.2001 as per the judgment dated 27.11.2012 of the Apex Court in the case of NR Parmar and thereafter to review all promotions based on the seniority list dated 24/26.04.2001 in a time bound manner.
- B. By an appropriate Order or Director the respondents be directed to give all consequential benefits to the applicants.
- C. Any other order or direction, which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.
- D. Cost of the present case may be awarded in favour of the applicants.”

2. In sum and substance, the plea of the applicant in the OA is that the respondents should prepare/recast seniority of the applicants in accordance with law declared by the Hon’ble Supreme Court in the case of **Union of India & Ors. Vs. N.R. Parmar**, (2012) 13 SCC 340.

3. On 19.12.2014 when the matter came up for hearing, this Tribunal passed the following order:-

“Heard Shri A.K. Behera for the applicant and Shri

Rajeev Kumar for the respondents.

2. MA 2645/2014, filed for joining together, is allowed.

3. The present MA 3976/2014 is filed by the applicant seeking stay of DPC scheduled to be held in pursuance of the letter dated 04.12.2014 for affecting promotions from Income Tax Inspectors to Income Tax Officers.

4. The learned counsel for the respondents submits that the copy of the MA was served on him only yesterday, and seeks time to get instructions before passing any orders in the MA.

5. However, the learned counsel for the applicant submits that in view of the Hon'ble Apex Court orders in N.R. Parmar's case, the respondents are under obligation to recast the seniority list before affecting any promotion and the respondents without implementing the same, proceeding with the further promotions to the post of Income Tax Officers. The learned counsel also drew the attention of this Tribunal to Annexure MA-3, dated 04.12.2014 – Suitability List, to show that the persons who were placed therein were promotee UDCs, who were junior to the applicants in the category of UDCs.

6. In the circumstances and in view of the prima facie case made out, there shall be stay on further proceedings in pursuance of Annexure MA-3 dated 04.12.2014 till the next date of hearing.

7. Since the main OA itself is listed on 23.01.2015, list the MA also on 23.01.2015. The respondents shall file their reply in the MA as well as in the OA before the said date.”

4. Now the respondents have filed MA No. 3066/2015 for vacation of the aforesaid order. In the misc. application, the respondents have taken a specific stand that the seniority of the applicants in the category of

UDC has been recasted in view of the **N.R. Parmer's** judgment of the Hon'ble Supreme Court. The relevant excerpt of the MA read thus:-

“The Committee has made recommendations in this regard on the basis of DoP&T's OM No. 35014/2/80-Estt.(D) dated 7.2.86/3.7.86 as upheld by the Hon'ble Apex court in the case of N.R. Parmar. On recasting the seniority list of UDCs (Pre-restructured), the applicants seniority position has been changed vis-à-vis their seniority position as per seniority list dated 24.26/04/2001. The changes in their seniority position are as under:-

S.No.	Name	Seniority as per seniority list of UDCs (Pre-restructured) dated 24/26.04.2001	Seniority as per seniority list of UDCs (Pre-restructured) dated 16.07.2015
1.	Shri Kishan Kanhaiya	2184	2051
2.	Baljeet Singh	2226	2101
3.	Diwakar Joshi	2220	2089
4.	Anupam Kumar	2225	2099
5.	Ramesh Kumar Tanwar	2035	2011
6.	Shiv Kumar	2036	2012
7.	Rajdeo Prasad Verma		1946

Accordingly, their seniority positions have changed in other cadres in their hierarchy.

5. Further, all promotions based on the seniority list of UDCs (Pre-restructured) dated 24/26.04.2001

up to the cadre of Inspector of Income Tax (it is) have been reviewed (Review of DPC held). The details of review of DPCs are as follows:-

S.No.	Review of DPC for	DPC No. & Date of DPC
1.	Sr. Tax Assistant	DPC No.4, DPC held on 30.07.2015
2.	Office Superintendent	DPC No.10, DPC held on 07.09.2015
3.	Income Tax Inspector	DPC No. 11, DPC held on 07.09.2015

The review of above DPCs has been done with a view to give consequential effect for changes in seniority/penal year in the feeder cadre/cadres of a particular post. The effect of changes in seniority/panel year in the cadre of Inspector of Income Tax (it is) has to be given by reviewing of DPCs/convening DPC for the post of Income Tax Officer for the year 2014-15 being the immediate higher post in the hierarchy. The same is not possible due to stay granted by the Hon'ble CAT in this case.

6. It is pertinent to mention here that, the Income Tax Officer is a 100% promotional post. The department is facing acute shortage of Income Tax Officers in absence of promotion to the cadre of ITOs. Consequent to cadre restructuring, keeping in pace with the growth of Tax Payers, new charges have been created which are lying vacant in the absence of officials. The current position of the Income Tax Officers in Delhi Charge is as follows:-

Sanctioned Strength of ITO	Working Strength of ITO	Number of posts vacant	Percentage of vacant post
656	539	117	18%

Due to the above vacancies/shortage of personnel the work is being hampered. Vacation of stay will lead to the promotion of approximately 100 ITOs in the Delhi Charge.

7. Out of the 7 Applicants herein, 04 Applicants herein are holding the post of Income Tax Officer (ITO) and 03 are Income Tax Inspectors (it is). In order to give consequential benefits to the 3 applicants belonging to the ITI cadre, vacation of stay is emergently required for considering them for promotion in the cadre of ITO.

8. Moreover, the staying of DPC has an all India ramification. DPCs for Income Tax Officers have already been convened in other Charges. The delay in holding of DPC would lead to placing Delhi ITOs at the bottom of the all India seniority list since, the seniority list of ITO is maintained at an all India level. This shall create anomaly and cause prejudice to them in future. Directions have been issued by the Board (CBDT) vide letter No. F.No.A-23012/04/2012-Ad.VI dated 16.07.2015 for expediting the revised inter-se seniority list of ITOs pertaining to the Pr. CCIT (CCA) charges except the charges where DPCs for promotion to the post of ITO has already been convened.

9. Thus, the vacation of stay on conduct of DPC in the cadre of ITO has a larger public cause in addition to the grant of consequential benefit to the applicant. Further all the grievances of the applicants have been addressed.”

5. The learned counsel for the applicants has no objection if the prayer made in the MA is allowed and the respondents are directed to act in terms of the stand taken therein.

6. In sum and substance, the learned counsels for the parties are at *ad idem* that the seniority of the applicants in the grade of UDC has been recasted in terms of **N.R. Parmar's** case (supra) and the review DPC for promotion to the post of Senior Tax Assistant, Office

Superintendent, Income Tax Officer and Income Tax Inspector have already been held and further review DPC for promotion to ITO would be held within three months from the date of receipt of certified copy of this order.

7. In the wake of the stand taken by the learned counsels for the parties, the OA stands disposed of. It goes without saying that that the promotees would be entitled to all consequential benefits in accordance with law.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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